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May 24, 1999

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**BY HAND DELIVERY**

Ms. Magalie R. Salas  
Secretary  
Federal Communications Commission  
The Portals  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Re: Notice of Ex Parte Communication Regarding Interconnection  
and Resale Obligations Pertaining to Commercial Mobile  
Radio Services, CC Docket No. 94-54**

Dear Ms. Salas:

On behalf of the Telecommunications Resellers Association ("TRA"), enclosed for inclusion in the referenced proceeding is a copy of a letter which was hand delivered today from David Gusky, Executive Vice President of TRA, to Thomas Sugrue, Chief of the Wireless Telecommunications Bureau.

I have hereby submitted two copies of this notice to the Secretary, as required by the Commission's rules. Please return a date-stamped copy of the enclosed (copy provided).

Please contact the undersigned if you have any questions.

Respectfully submitted,



Linda L. Oliver  
Counsel for Telecommunications  
Resellers Association

Enclosure

No. of Copies rec'd 012  
List A B C D E



**Telecommunications  
Resellers  
Association**

1401 K Street, N.W.  
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Washington, D.C. 20005

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*BY HAND DELIVERY*

Thomas Sugrue  
Chief, Wireless Telecommunications Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

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**Re: Interconnection and Resale Obligations Pertaining to  
Commercial Mobile Radio Services, CC Docket No. 94-54**

Dear Mr. Sugrue:

On behalf of the Telecommunications Resellers Association ("TRA"), I am writing to underscore TRA's views regarding the CMRS resale rule and the FCC's scheduled sunset of that requirement.

It is critical that the Commission reject any efforts to limit or eliminate the applicability of the wireless resale requirement. Many CMRS providers continue to resist fulfilling their legal obligation to permit unrestricted resale of their services. Discriminatory treatment of wireless resellers is still common, despite the growth of PCS and SMR competition. The FCC must make it clear to the wireless industry that the resale rule will continue in effect and that the FCC is prepared to enforce the rule strictly.

TRA urges the Commission to make the following specific points in its reconsideration order in the referenced proceeding:

1. Review of Market Conditions Prior to Sunset. TRA believes that the Commission's decision to sunset the resale requirement is unlawful and that the sunset should be eliminated. At a minimum, however, the Commission should promise to re-examine competitive conditions in the wireless market *before* allowing any sunset to take place. This

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is the approach that the Commission took in the LMDS context. 1/ Even PCIA, the PCS industry association, agrees that the CMRS market is far from competitive today. 2/ Unless and until the Commission can determine that resale is freely available and that discrimination against wireless resellers is unlikely to take place (a determination it could not make today), the Commission cannot lawfully eliminate the resale obligation.

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1/ In the LMDS proceeding, the Commission said that it would re-evaluate the level of competition in the LMDS market before permitting the scheduled sunset of the eligibility restrictions on ILEC and cable company ownership of in-region LMDS licenses. Specifically, the Commission stated that it would need to conduct a study "examining whether 'there [has been] sufficient entry and increases in competition in the markets at issue . . . for us to be able to sunset the restrictions on incumbent LECs and cable companies.'" Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules, Third Order on Reconsideration, CC Docket No. 92-297, FCC 98-15 (rel. Feb. 11, 1998), at ¶ 113, quoting Second Report and Order in CC Docket No. 92-297, 12 FCC Rcd 12545, 12633 (para. 198). See also id. at ¶ 112.

2/ In its reply comments in the commercial mobile radio services (CMRS) spectrum cap proceeding, PCIA opposed lifting the spectrum cap, citing data showing that the PCS share of the wireless market is still relatively low, and arguing that the CMRS market is still "extraordinarily concentrated." See Reply Comments of the Personal Communications Industry Association (PCIA) in 1998 Biennial Review, Spectrum Aggregation Limits for Wireless Telecommunications Carriers, WT Docket No. 98-205, et al., filed Feb. 10, 1999, at 8 (copy placed in record of CC Docket 94-54 on March 17, 1999). PCIA's own data show that the FCC's decision to sunset the wireless resale requirement, which was based on predictions of the effect of the introduction of PCS on the competitiveness of the wireless market, was not well-founded.

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2. Access to Electronic Billing Information. Access to electronic billing information is essential, as a practical matter, to enable resellers to generate their own bills for their retail customers. The Commission should declare that a refusal to provide reseller customers with access to billing information in an electronic format constitutes an unlawful indirect restriction on resale, in those instances in which the carrier has the capability to provide the information in that format.
3. Application of Rocket Docket Procedures to Wireless Resale Complaints. The Commission should declare that accelerated docket procedures will apply to complaints alleging noncompliance with the wireless resale requirement. This will send the strong signal that the Commission will not tolerate carrier resistance to reseller requests for service.
4. Resale of Wireless/CPE Bundled Offerings. The Commission should keep in place the longstanding requirement that CMRS providers must permit resellers to resell bundled offerings of wireless service and equipment. In the absence of such a requirement, carriers could use the bundle as a means to provide effective discounts in service that would be unavailable to resellers. If the Commission does eliminate the resale requirement for bundled offerings, it should, at a minimum, clearly reaffirm that the airtime portion of the bundle be available for resale.
5. No Market-by-Market Elimination of the Resale Requirement. The Commission should not open the door to the filing of forbearance petitions on a market-by-market basis. The arrival of additional competitors in the wireless market has not changed the incentives or behavior of wireless carriers (including new entrants) toward their reseller customers. Furthermore, any attempt to evaluate the need for a resale requirement in a particular market would exhaust the Commission's resources. There is no bright line test that could lawfully be applied to justify forbearance on a market-by market basis.

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TRA urges the Commission to clarify the above points in its reconsideration order. Please give me a call if you have any questions about the above points or would like to discuss these issues further.

Sincerely yours,

A handwritten signature in cursive script that reads "David Gusky" followed by a stylized flourish that appears to be "JLCO".

David Gusky  
Executive Vice President

cc: Magalie R. Salas, Secretary  
Ari Fitzgerald  
Peter Tenhula  
Dan Connors  
Kevin Martin  
Karen Gulick  
Diane Cornell  
Jim Schlicting  
Nancy Boocker  
Jeanine Poltronieri  
Walter Strack  
Jane Phillips